IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1285 of 2000
and
SPECIAL CIVIL APPLICATION No 1286 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEWTON ENGINEERING & CONST CO LTD

Versus

STATE OF GUJARAT

Appearance:
MR DIPAK R DAVE with MR SJ SHAH for Petitioner
MS NANDINI JOSHI, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/2001

COMMON ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution, the petitioner has prayed for a writ to direct respondent No. 4 - Commissioner of Transport and respondent No. 2 - Assistant Regional Transport Officer, Check Post at Songadh, District Surat to release the truck and crane detained by respondent Nos. 2 and 4 and the petitioner has also prayed for a declaration that

hydraulic mobile crane is not a motor vehicle as per Section 2(28) of the Motor Vehicles Act, 1988 and for a consequential direction that the respondents shall not insist for registration of such vehicles or for any tax under the provisions of Bombay Motor Vehicle Tax Act.

2. As far as the petitioner's contention that the mobile cranes are not motor vehicles within the meaning of the Motor Vehicles Act, 1988 is concerned, the controversy is already concluded against the petitioner by the judgment dated 14.8.2000 rendered by a Division Bench of this Court in Crane Owners Association vs. Union of India, 2000(3) GLH 583. It is, therefore, not necessary to give any elaborate reasoning for holding that the mobile cranes are motor vehicles under the Motor Vehicles Act, 1988.

3. Mr Dave, learned counsel for the petitioner has sought to raise other factual contentions including a contention that the mobile cranes in question were for the first time brought into the Gujarat State on 30.12.1999/2.1.2000 and that, therefore, in any view of the matter, the respondents cannot levy or demand any tax for the period prior to 31.12.1999/2.1.2000. Mr Dave has further placed reliance on the decision rendered by a learned Single Judge of this Court in Special Civil Application No. 9976 of 1999 and cognate petitions decided in September/October, 2000. The learned counsel has particularly relied on the directions given by this Court in the above group of petitions as contained in para 12 of the judgment.

4. On the other hand, Mr Nandini Joshi, learned AGP appearing for the respondents has submitted that the tax recovery notices produced by the petitioner alongwith the rejoinder affidavit clearly state that it was open to the petitioner to submit his explanation within 10 days from the date of receipt of the notices dated 25.3.2000 and that it is only if the petitioner fails to submit his explanation within the stipulated time limit or if the explanation offered by the petitioner is not accepted that the question of the petitioner being required to pay tax as demanded would arise.

5. Having heard the learned counsel for the parties, it appears to the Court that the tax recovery notices dated 25.3.2000 produced by the petitioner alongwith the rejoinder affidavit are really speaking show cause notices. As it is clearly mentioned in the notices themselves, it was open to the petitioner to approach the Assistant Regional Transport Officer, Check Post at

Songadh and Bhilad and to point out all the necessary facts in support of his contention and to satisfy the authorities that the tax demanded as per the recovery notices was not proper or that it was on the much higher side.

Since the petitioner was prosecuting these petitions, the petitioner might not have appeared before the authority issuing the notice, though the learned counsel for the petitioner states that the petitioner has submitted various documents before the Assistant Regional Transport Officer at Songadh.

6. In view of the direction which this Court proposes to give, it is not necessary to go into the controversy as to whether the documents submitted by the petitioner before the authorities so far are sufficient enough to discharge the petitioner from the liability.

7. In the result, the petitions are disposed of with a direction that if the petitioner approaches the Assistant Regional Transport Officer, Check Post at Songadh and Bhilad, within two weeks from today, with his explanation and documents, if any, the officers shall consider the same alongwith any other documents/material which the petitioner might have furnished earlier and to decide the application in accordance with law and finally determine the tax leviable on the vehicles in question in accordance with law including the law laid down by the Division Bench of this Court in Crane Owners Association vs. Union of India, 2000(3) GLH 583 and also in the judgment rendered by the learned Single Judge of this Court in Special Civil Application No. 9976 of 1999 and cognate petitions decided in September/October, 2000.

This exercise shall be completed within one month from the date on which the petitioner submits his explanation/documents.

8. In view of the above direction, the appeals preferred by the petitioner against the tax demands shall not survive for the present and depending on the outcome of the proceedings before the Assistant Regional Transport Officer, the petitioner shall be at liberty to have further recourse in accordance with law.

Rule is discharged with no order as to costs. Direct Service is permitted.

(M.S. Shah, J.)

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